IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11402 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PUSHPABEN W/O. KISHORBHAI ALIAS DOGO BALLUBHAI G.PATEL
Versus
COMMISSIONER OF POLICE FOR THE CITY OF SURAT

Appearance:
1. Special Civil Application No. 11402 of 2002
MR ANIL S DAVE for Petitioner No. 1
MR KAMEN N SHUKLA for Petitioner No. 1
MS NV JOSHI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/05/2003

ORAL JUDGEMENT

The petitioner is a lady detenu. By filing this petition she has challenged her detention order dated

28/10/02 by which she is detained as a bootlegger under PASA. Along with the detention order the petitioner was also served with the order of detention of the same date. In the grounds of detention, there is a reference about four criminal cases which are filed against the petitioner under the Bombay Prohibition Act. The detaining authority after having satisfied itself about the activities of the petitioner, has detained her under preventive detention. The said order of detention is challenged by the petitioner on various grounds.

The Learned advocate for the petitioner submits that the last criminal case filed against the petitioner is on 09/09/02 and the order of detention is passed on 28/10/02. It is submitted that if the activities of the petitioner is such which is required to be curbed immediately, then it was not necessary for the detaining authority to wait for a period of more that one month and nineteen days in passing the detention order. Neither the State nor the detaining authority has filed any reply controverting the aforesaid fact. Since this averment in the petition, which is finding place at para 21 in the petition, is not controverted by the respondents by filing appropriate reply, the petition is required to be allowed, only on the aforesaid ground for non-explaining the said delay by filing appropriate reply.

The petition is accordingly allowed. The order of detention is ordered to be quashed and set aside and it is accordingly set aside. The petitioner - Pushpaben w/o Kishorbhai alias Dogo Ballubhai Ghodiya Patel is ordered to be released forthwith, if she is not required in connection with any other case. Rule is accordingly made absolute.

(P. B. Majmudar, J.)
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